

*"Two decades have passed, bringing with them marked changes in the state government and great progress in the field of personnel administration, yet the civil service provisions as adopted in 1918 have remained rigidly intact. The purpose of securing for the state the best and most efficient service possible has been defeated by inability to change the outmoded machinery."**

Any serious effort to reform public policy must strike the right balance between preserving principles that actually *work*, while updating or abolishing rules that have outlived their usefulness. Change may be inevitable, but government's ability to keep pace with it is not. Nowhere is government more inherently reluctant to change than in managing its own operations. Yet government's failure to modernize its own policies – even as the rest of the world moves on – can have embarrassing and costly consequences.

The core of Colorado's state government is the "classified" civil service system. In 1918, Colorado voters joined a national progressive reform movement to combat political patronage. As World War I drew to a close, reformers understandably wanted to ensure that access to public employment would not depend upon a politically motivated "spoils" system. Given the absence of anti-discrimination laws or appreciable restrictions on official misconduct, Colorado voters passed a sweeping constitutional system of civil service protections.

After nearly a century, much – and indeed most – of that system serves Colorado well today. The framers of the Civil Service Amendment were especially far-sighted in their determination to provide job protections to state employees based on their demonstrated job performance instead of their political preferences. Yet just as the U.S. Constitution has needed occasional amendment in light of changing realities, and to reflect more modern ways of thinking, so too are aspects of Colorado's civil service system showing signs of strain and even breakdown:

- At a time when thousands of Colorado citizens are out of work, filling a state job can take six months or longer: State constitutional restrictions unnecessarily prevent many qualified applicants, including ethnic and racial minorities, from competing effectively for state jobs, instead rewarding the ability to take employment tests.

* From a report by Griffenhagen & Associates, Public Administration and Finance Consultants to the State of Colorado, 1939.

- Problem employees are sometimes returned to protected state jobs despite their breach of the public trust and the harm it inflicts on their fellow employees. In one notable case, an employee at a state nursing home took money from a resident's account, and was fired for misappropriating resident funds. The firing was overturned because the supervisor wrote "misappropriation" in the firing decision, but at the hearing used the word "theft," and there was no showing that the employee had used the money for his own personal benefit.
- Court decisions interpreting the Civil Service Amendment have clouded state government's ability to keep pace with new technologies and business practices. Rather than encourage the State to retrain its employees for new jobs, the law effectively forces state employees to remain in outmoded lines of business – putting them at increased risk of layoff and wasting taxpayer money. For example, independent research concludes that it costs \$57,000 to migrate a COBOL programmer to Java, and that the failure rate is 60%. We need to – and can – do better by our employees and taxpayers.

To help state government keep pace with a changing world, and to preserve the best, core aspects of Colorado's constitutional civil service system, the Governor's Commission on Civil Service Reform has carefully reviewed the history and current application of the Civil Service Amendment to the modern world. Ours is the most extensive outreach effort ever undertaken to involve state employees into the constitutional reform process. During the course of its work this year, Commission members and staff took formal testimony from experts and stakeholders from all walks of life and met in "town hall" settings with over 3,000 state employees in every part of Colorado.

Specifically, the Commission recommends:

- **Improving employee selection by eliminating the "rule of three" and replacing it with a limited number of qualified candidates as provided by law (the "rule of qualified").** Candidates meeting minimum qualifications and satisfying additional testing or other required demonstration of competencies, may be appointed. Preferences would be preserved for veterans of the armed forces.
- **Enabling the next Governor to use the Senior Executive Service ("SES") to more effectively establish and implement policy decisions.** The SES includes fewer than 100 senior government managers responsible for directly controlling, through subordinate managers, relatively large or important segments of cabinet departments, including the acquisition and administration of human, fiscal, operating, and capital resources, and direction and guidance of significant programs, projects, and public policy development. The Commission recommends allowing department heads the flexibility to appoint and dismiss SES positions when the next Governor takes office in January 2007.

- **Provide more flexibility to meet sudden or occasional business demands – especially with respect to seasonal needs – by allowing the hiring of temporary employees for up to nine months.** Seasonal employees are needed on a recurring basis every year, but always for periods of less than a year, many of whom are responsible for caring for our state parks, wildlife, and other natural resources. The public is better served if the State is permitted to rehire the same trained and experienced personnel, rather than using either a succession of temporary employees or private contractors.
- **Limit the disruptive effects of employees “bumping” other employees out of their jobs in times of budget challenges or reorganization.** Currently, when there is a reduction of force at a state agency, more senior employees can “bump” out and take the jobs of less senior employees. This is especially a problem in programs for which the funding is limited for a specific period of time or until a particular goal is achieved or project completed. To eliminate this unnecessary disruption, the Commission recommends limiting these “bumping rights” to vacant positions only.
- **Move the constitutional requirement that state employees be Colorado residents into statute so that the General Assembly can allow exceptions where it would better serve our citizens.** Currently, only Colorado residents may serve as state employees, and unless the State Personnel Board grants permission, only Colorado residents may *apply* for state jobs. This rule ignores the realities of our modern national economy, and the General Assembly should be allowed to make exceptions where appropriate. For example, posting revenue agents in New York to conduct field audits of large national firms doing business in Colorado enhances the ability of the State to collect taxes that are owed. In addition, in some border areas – most notably the Four Corners region – the local high cost of living prevents many qualified applicants from seeking employment because they would not be able to continue living in a lower-cost community just across the state line.
- **Strengthen the ability to discipline the relative handful of problem employees who create an unfair negative impact on public perceptions of state employees and employee morale.** The Constitution currently provides only four bases for discipline: “failure to comply with standards of efficient service or competence, or for willful misconduct, willful failure or inability to perform his duties, or final conviction of a felony or any other offense which involves moral turpitude.” The General Assembly should be able to provide by law the appropriate reasons for which employees may be dismissed or otherwise disciplined. The State Personnel Board’s role should emphasize conducting appeals, with the standard of review being whether the management decision was irrational. The State Personnel Director should be vested with authority to regulate the selection, classification, and compensation of state employees.

- **Modernize state contracting to strengthen employee retraining and job protections while taking advantage of private investment in technology.** The Colorado Supreme Court has said that the Civil Service Amendment effectively limits the ability of the State to contract for services which have been “commonly or historically” performed by state employees. This is not an effective way to determine what should and shouldn’t be outsourced, and denies the flexibility needed to meet rapidly changing business needs, particularly with regards to technology. The authority of the State to outsource any service or function must be recognized, while individual employees should be transferred or retrained rather than laid off. At the same time, the State’s competencies in performance management contracting need to be improved through a combination of training and emphasizing this competency in the selection and retention of middle-managers responsible for outsourcing oversight.
- **Provide flexibility for state institutions of higher education to create their own, separate personnel systems for their respective employees.** There may be reasons of efficiency and economics that make it desirable for an individual governing board to “opt-out” of the state civil service and to provide its own personnel system. This does not require a constitutional amendment; rather the General Assembly already possesses the authority to do this by statute. Therefore, it is important that the General Assembly guarantee the protection of individual employees’ due process, civil service, and retirement rights, and at the same time ensure that a governing board’s process for developing such a system includes and is responsive to the concerns of current employees.

Taken together, the Commission’s recommendations preserve the bedrock of Colorado’s civil service system – job protections against patronage in public employment – while modernizing rules that, given unforeseen changes in the outside world, are holding state employees back and wasting millions of taxpayer dollars. We believe that these modest changes will lead to a civil service system that is both worthy of its employees and the public they serve.